

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUDOLFO CHAVEZ,

Plaintiff,

v.

LEAH CHAVEZ,

Defendant.

No. 2:22-cv-01431-TLN-KJN

SUA SPONTE REMAND ORDER

This matter is before the Court pursuant to Defendant Leah Chavez's ("Defendant") Notice of Removal. (ECF No. 1.) For the reasons set forth below, the Court hereby REMANDS the action to the Superior Court of California, County of San Joaquin, due to lack of subject matter jurisdiction.

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1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 On August 12, 2022, Defendant filed a *pro se* Notice of Removal removing what appears
3 to be a dissolution of marriage action from the San Joaquin County Superior Court. (ECF No. 1.)
4 Defendant did not attach a state court complaint (“Complaint”) to the Notice of Removal.
5 Defendant indicates removal is based on federal question jurisdiction. (ECF No. 1-1.)

6 **II. STANDARD OF LAW**

7 28 U.S.C. § 1441 permits the removal to federal court of any civil action over which “the
8 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). “Removal is
9 proper only if the court could have exercised jurisdiction over the action had it originally been
10 filed in federal court.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

11 Courts “strictly construe the removal statute against removal jurisdiction,” and “the
12 defendant always has the burden of establishing that removal is proper.” *Gaus v. Miles, Inc.*, 980
13 F.2d 564, 566 (9th Cir. 1992) (per curiam). Furthermore, “[i]f the district court at any time
14 determines that it lacks subject matter jurisdiction over the removed action, it must remedy the
15 improvident grant of removal by remanding the action to state court.” *California ex rel. Lockyer*
16 *v. Dynegy, Inc.*, 375 F.3d 831, 838, *as amended*, 387 F.3d 966 (9th Cir. 2004), *cert. denied* 544
17 U.S. 974 (2005).

18 Federal question jurisdiction is set forth in 28 U.S.C. § 1331. *See* 28 U.S.C. § 1331. The
19 “presence or absence of federal question jurisdiction is governed by the ‘well-pleaded complaint
20 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on
21 the face of the plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 386. Federal
22 question jurisdiction therefore cannot be based on a defense, counterclaim, cross-claim, or third-
23 party claim raising a federal question. *See Vaden v. Discover Bank*, 556 U.S. 49 (2009); *Hunter*
24 *v. Philip Morris USA*, 582 F.3d 1039, 1042–43 (9th Cir. 2009).

25 **III. ANALYSIS**

26 Although Defendant removed this action based on federal question jurisdiction, the Court
27 cannot determine whether the action arises under federal law without the underlying Complaint.
28 *See Caterpillar*, 482 U.S. at 386 (“[F]ederal jurisdiction exists only when a federal question is

1 presented on the face of the plaintiff's properly pleaded complaint."). Defendant refers to the
2 state court action as relating to her dissolution of marriage. (*See generally* ECF No. 1.)
3 Generally, such actions are grounded solely in state law. To the extent Defendant is arguing
4 some aspect of that action is unconstitutional, such an argument likely relates to an affirmative
5 defense or potential counterclaim, which cannot be considered in evaluating whether a federal
6 question appears on the face of Plaintiff's Complaint. *See Vaden*, 556 U.S. at 60–62. In any
7 event, Defendant bears the burden of showing removal is proper. *See Gaus*, 980 F.2d at 566. By
8 failing to attach the Complaint, Defendant has not met her burden.

9 As there are no apparent grounds for federal jurisdiction, it is appropriate to remand this
10 case, *sua sponte*, for lack of federal subject matter jurisdiction. *See United Investors Life Ins. Co.*
11 *v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir. 2004) ("the district court ha[s] a duty to
12 establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties
13 raised the issue or not.").

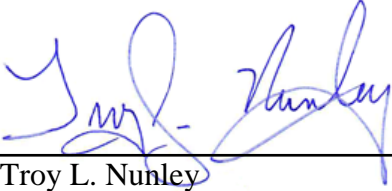
14 **IV. CONCLUSION**

15 For the reasons stated above, the Court hereby REMANDS this action to the Superior
16 Court of California, County of San Joaquin.

17 IT IS SO ORDERED.

18 **DATED: August 15, 2022**

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Troy L. Nunley
United States District Judge